IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7900 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLABEN RANCHHODBHAI

Versus

HARSUKHLAL ZAVERCHAND VAID

Appearance:

MR RR TRIVEDI for Petitioner Nos. 1-2

MR PRATAPRAY J VYAS for Respondent No. 1

MR NN PRAJAPATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/08/2002

ORAL JUDGEMENT

1. The petitioners herein are the tenants of the suit premises and the respondent is the landlord of the same. The respondent-landlord filed an application before the Civil Judge (J.D.), Jetpur, being Civil Miscellaneous Application No.40 of 1987. The said Application was filed under Section 13A of the Bombay

Rents Hotel and Lodging House Rates Control Act. By filing the aforesaid application, it was prayed that the applicant wants to repair the suit premises and after removing the roof, he wants to construct a building with a terrace by putting a cement slab over the suit property. In the application, the landlord stated that there is another vacant room available, which is in the occupation of the landlord and he is willing to give the said alternative premises to the tenant for temporary occupation till the rented premise is renovated.

2. The trial court, by its order dated 31.1.1991, allowed the said application and granted permission to the applicant-landlord to renovate the premises for the purpose of putting the slab and constructing terrace as per the sanctioned plan granted by the Nagarpalika. It is ordered by the trial court that till the said work is carried out, the tenants, i.e. the petitioners herein, may vacate the rented premises and may shift their occupation to the alternative premises offered by the landlord. After the house in question is constructed, the tenant can re-occupy the tenanted premises. The trial Court also ordered that the construction may be completed shortly and thereafter, within two months, the rented premises may be re-allotted to the tenants.

3. Since the original application was submitted by the respondent-landlord under Section 13A of the Bombay Rent Act and as the said order is not an appealable order, the petitioners preferred a revision application under Section 29(3) of the Bombay Rent Act. The said revision was preferred before the District Court at Gondal and the said revision was disposed of by the Second Extra Assistant Judge, Rajkot District, at Gondal, who, by his order dated 20.1.1998, rejected the revision application. The petitioners are accordingly challenging the aforesaid orders by way of the present Special Civil Application which is filed under Article 227 of the Constitution of India.

4. The revisional court came to the conclusion that since the landlord is offering temporary accommodation of other premises to the tenants, no undue hardship is likely to cause to the tenants and the proposed work will not cause undue hardship to the tenants. The revisional court also found that since the landlord is willing to hand over the possession of the rented premises after constructing the roof, there is no question of any undue hardship to the tenant. The Court also further came to

the conclusion that the applicants are entitled to carry out the proposed work and the applicants are entitled for possession of the rented premises to carry out the proposed work for a short time. Accordingly, the said revision was dismissed.

5. At the time of hearing of the Special Civil Application, it was argued by Mr.R.R. Trivedi, learned Advocate appearing for the petitioners-original tenants, that the orders of both the Courts below are contrary to law and the Courts below have committed serious error of law in entertaining the application filed by the respondent-landlord, which is filed under Section 13A of the Bombay Rent Act. It is submitted that the order of the trial court, which is confirmed by the revisional court, is without jurisdiction, as, no order, which is passed under Section 13A of the Act, could have been passed by the trial court. It is submitted that the application which is submitted by the landlord, by which possession of the rented premises is asked for, is not maintainable and, therefore, it is prayed that the orders passed by the courts below are required to be quashed and set aside.

6. Mr.Prajapati, who is appearing for the landlord, on the other hand, has supported the order passed by the trial court, which was confirmed by the revisional court.

7. At this stage, it would be profitable to refer to the provisions of Section 13A of the Bombay Rent Act, which provide as under :-

> " ... ...
>
> 13A. Permission to construct additional structure.-Where the landlord proposes to make any improvement in, or construct any additional structure on, any building which (or part of which) has been let to a tenant, and the tenant refuses to allow the landlord to make the improvement or construct such additional structure, if the Court, on an application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the Court may permit the landlord to do such work, and may make such other order as it thinks fit in the circumstances of the case.
>
> ... ..."

The aforesaid provision nowhere provides that the tenant can be asked to vacate the suit premises even for a temporary period for the purpose of carrying out alterations or some change in the premises. So far as the scheme of Section 13A of the Rent Act is concerned, it provides for alterations or making some additional constructions in the rented premises. That construction or alterations can be carried out by the landlord in case the same may not result into any hardship to the tenant, meaning thereby, that while retaining the possession, such alterations or additional construction is permissible. For example, if the landlord wants to construct additional floor on the terrace portion of the rented premises, naturally, he can do so after obtaining necessary orders under Section 13A of the Rent Act, but in such eventuality, the tenant is not required to vacate the premises. In short, no decree for possession is contemplated under Section 13A of the Rent Act. In the instant case, it is not in dispute that in order to carry out the repairs or construction of a pucca slab, the tenant is required to vacate the premises. Otherwise, it is not possible for the landlord to carry out the said work. It is not the case of the landlord that while allowing the tenant to retain the possession, he wants to carry out the aforesaid alterations or additions in the existing premises. For carrying out the aforesaid work, the tenant is required to vacate the premises, may be for a temporary period, but, in my view, if the premises are required to be vacated, even for a short period, by handing over the rented premises to the landlord for such intervening period, then such type of cases will not fall under the provisions of Section 13A of the Rent Act. If the tenant is required to vacate the premises even for a short period, no such relief can be granted by the court in an application filed under Section 13A of the Bombay Rent Act. The trial court has, therefore, clearly exceeded its jurisdiction in giving the relief, by which the tenant is required to vacate the premises while entertaining the application under Section 13A of the Rent Act. In the Bombay Rent Act, there is a separate provision for dealing with such situation when a tenant can be asked to vacate the premises even for a temporary period for carrying out the repairs. Section 13(1)(h) of the Bombay Rent Act provides as under :-

> " ... ...
>
> 13. When landlord may recover possession.-(1) Notwithstanding anything contained in this Act, but subject to the

provisions of section 15, landlord shall be entitled to recover possession of any premises if the Court is satisfied-

xxx xxx xxx

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

... ..."

There is also a further provision in sub-section (3) of Section 13, which reads as under :-

" ... ...

(3) The Court may pass the decree on the ground specified in clause (h) or (i) of sub-section (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repairs or erection.

... ..."

At this stage, reference is required to be made to Section 16 of the Act, which provides as under :-

" ... ...

16. Recovery of possession for repairs and re-entry.-(1) The Court shall when passing a decree on the ground specified in clause (h) of sub-section (1) of Section 13 ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and, if the tenant so elects, shall record the fact of the election in the decree and specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

(2) If the tenant delivers possession on or before the date specified in the decree the landlord shall, two month before the date on which the work of repairs is likely to

be completed, give notice to the tenant of the date on which the said work shall be completed. Within fifteen days from the date of such notice, the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month. If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the original terms and conditions. If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

(3) If, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with sub-section (2), the Court may, on the application of the tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on the original terms and conditions; and on such order being made the landlord and any person who may be in occupation shall give vacant possession to the tenant of the premises or part thereof.

(4) Any landlord who, when the tenant has vacated by the date specified in the decree, without reasonable excuse fails to commence the work of repairs and any landlord or other person in occupation of the premises who fails to comply with the order made by the Court under sub-section (3), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

... ..."

Therefore, the landlord was required to move the Court under Section 13(1)(h) of the Bombay Rent Act and the Court was required to consider the provisions of Section 13(1)(h) along with Section 16 of the Bombay Rent Act, which deals with possession for repairs and re-entry.

8. In view of the same, if the tenant is asked to vacate the premises even for a temporary period, the Court is required to pass a decree for eviction as provided in Section 13(1)(h) of the Rent Act. There is no such provision in the Act that by filing an application under Section 13A, a decree for eviction can be passed even for a temporary period. In the instant case, considering the order of the trial court, it is clear that the tenant is asked to vacate the premises, may be for a temporary period. Nonetheless, considering the nature of the direction, it is clear that there is a decree for eviction in favour of the landlord and against the petitioners for a temporary period. In my view, therefore, the only alternative available to the respondent is to move an application for decree for eviction under Section 13(1)(h) and the Court cannot compel the tenant to take the other premises by vacating the existing premises even for a temporary period while entertaining an application under Section 13A of the Rent Act. Under the aforesaid circumstances, there is no question of passing any decree for eviction even for a temporary period, as has been done by the trial court in the instant case. The order passed by the trial court is, therefore, beyond the scope of the provisions of Section 13A of the Bombay Rent Act.

9. Under the above circumstances, the order of the trial court is contrary to law. Under these circumstances, the order of the trial court, Annexure 'A', and the order passed by the revisional court at Annexure 'B', confirming the order of the trial court, are required to be quashed and set aside. It will be open for the respondent-landlord to move appropriate application for getting decree for possession by resorting to the appropriate provisions of the Rent Act.

10. The petition is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.

29th August, 2002 (P.B. Majmudar, J.)

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(apj)